

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the)	
Telecommunications Act of 1996)	

To: The Commission

COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch"), by its attorneys, hereby submits its comments in response to the *Public Notice*, DA 98-1198, released June 19, 1998, "*Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding*" (the "*Remand Public Notice*").

I. Background

In *MCI Telecommunications Corp. v. FCC*,^{1/} the Court remanded the Commission's *Second Report and Order*^{2/} in CC Docket No. 96-128 "for further proceedings consistent with the decision of the Court." That decision held that the Commission in the *Second Report and Order* failed in its attempt to "construct" a "market rate" for toll-free calls, including subscriber 800 calls, placed from payphones.^{3/}

^{1/} Case No. 97-1675, Slip. Op. (D.C. Cir., May 15, 1998).

^{2/} 13 FCC Rcd 1778 (1997).

^{3/} *MCI v. FCC*, Slip. Op. at pp. 3, 5.

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In the *Remand Public Notice*, the Commission responds to the Court order by continuing to seek a market-based rate for toll-free calls placed from payphones. However, the Commission now realizes that its assumption that a market-based rate for such calls may be derived from a market rate for coin calls can only be “true in a competitive market in which costs and rates converge” in the coin call market.^{4/} The Commission, therefore, now seeks to establish a record on whether costs and rates in fact converge in the coin call market and whether the local coin market is in fact competitive.^{5/} The Commission also asks for comment on “other market-based methodologies that could be used to establish a per-call compensation rate” for toll-free calls placed from payphones.^{6/}

II. Caller Pays Is the Fairest, Most Efficient Market-Based Compensation Methodology

There is “[n]o discernible ‘market rate’” for toll-free calls placed from payphones.^{7/} Consequently, the Commission repeatedly has attempted to “construct” one using proxies that were based upon other proxies — a process the Court characterized as resulting in subtracting apples from oranges.^{8/} At the same time, the Commission has given short shrift to a compensation methodology that clearly is market-based, serves the public interest and meets the requirements of the Court: having the payphone user directly compensate the payphone service

^{4/} *Remand Public Notice* at p. 2, citing *MCI v. FCC*, Slip Op. at p. 5.

^{5/} *Id.*

^{6/} *Id.*

^{7/} *MCI v. FCC*, Slip Op. at p. 3.

^{8/} *MCI v. FCC*, Slip Op. at pp. 3, 5.

provider ("PSP") at the payphone, i.e., the point of purchase ("caller pays").

Caller pays has received substantial support from a diverse cross section of commenters throughout the course of this proceeding , and has the following advantages over the carrier-pays compensation scheme previously adopted by the Commission:

Caller pays guarantees that all PSPs will receive direct and immediate compensation for "each and every completed call" placed from their payphones, as required by statute. No question will arise about who is responsible for compensating PSPs. PSPs will have use of compensation funds as soon as they are collected at the payphone, and there will be no possibility of a billing dispute.

Caller pays imposes no additional transaction costs upon third parties. Complicated and expensive blocking, tracking, and billing mechanisms are unnecessary. In fact, caller pays creates network efficiencies, because a call will not be placed unless coins are deposited. Under the current system, a caller uses not only the payphone to place the call, but also the network facilities (to connect the call to the IXC) and the IXC's facilities (before the call is blocked). Thus, a call may be held open for a brief period while the IXC is ascertaining whether to block the call. With caller pays, the call will not leave the payphone until coins are deposited, saving the PSP use of its lines and CPE.

Caller pays promotes competition among PSPs by incenting PSPs to establish competitive rates in order to compete for customers. Because the decision whether or not to deposit coins lies with the person placing the call, there is incentive for new entrants to compete with established PSPs on price and service.^{9/} Negotiation of rates can occur, as with most consumer transactions, at the point of purchase. The market therefore should experience both competition among PSPs and an increase in the number of payphones available for public use.^{10/}

^{9/} In contrast, a guaranteed default rate, in conjunction with locational monopolies, thwarts competition, because there is no incentive for a PSP to set a rate lower than the default rate.

^{10/} Competition has not developed under the Commission's carrier pays scheme, and is not likely to develop, because PSPs are guaranteed a "default" payment, providing no incentive for market forces to develop. Notably, the Commission never has explained how compensation will develop if the caller has no incentive to locate a competitive payphone. Instead, the Commission has relied on its prediction that the market will become competitive. The Court now has stated that this prediction is not entitled to any weight in the absence of proof that costs and rates

Caller pays also promotes the use of payphones by the public by limiting the use of call blocking. Call blocking is a necessary component of the Commission's carrier pays system. However, call blocking is not an ideal solution in light of the statutory goal of "widespread deployment of payphone services to the benefit of the general public".^{11/} As the Court recognized, call blocking results in a loss of business for carriers and PSPs.^{12/} Moreover, as the Commission is well aware, call blocking may not even be available to allow an overpriced payphone call to be refused,^{13/} resulting in further distortion of market forces.

Caller pays substantially achieves statutory goals. Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, requires the Commission to adopt payphone compensation rules that promote competition among PSPs and that promote the widespread deployment of payphone services for the public.^{14/} As shown, caller pays achieves these goals far more efficiently than any other compensation system.

Many commenters in this and related payphone proceedings have advanced compelling arguments that the adoption of a "caller pays" system for PSP compensation would not violate the restrictions on the use of "toll-free" numbers in section 228 of the Communications Act.^{15/} Indeed, the Commission itself has recognized that the prohibition in the Telephone Operator Consumer Services Improvement Act ("TOCSIA") against advance payment

converge for coin calls.

^{11/} 47 U.S.C. § 276(b)(1).

^{12/} *Payphones I*, 117 F.3d at 564.

^{13/} The Commission has granted numerous waivers of its rules, with the result that payphone-specific coding digits, which are a prerequisite for targeted call blocking, are not uniformly being transmitted by LECs.

^{14/} The Commission already has concluded that these goals can be accomplished by ordering that PSPs shall be compensated at a market-based rate. However, as is clear from the Court's decisions, the Commission has failed to implement a true market-based system.

^{15/} See, e.g., Comments of Radiofone, Inc. in RM-9273 filed June 8, 1998, pp 3-8.

by callers does not apply to subscriber 800 calls, and therefore does not act as a bar to adopting a caller pays system.

III. If Caller Pays Is Not Adopted As a Global Solution Some Caller Pays Numbers Must be Made Available

AirTouch has proposed that the Commission establish and dedicate a unique 8XX code, or dedicated range of numbers within such a code, for toll-free calls placed from payphones in which a coin in the box is required to complete the call. Under this proposal, a toll-free subscriber would have three options: (1) subscribe to a traditional toll-free number and incur per-call payphone charges passed through by the carrier; (2) subscribe to a traditional toll-free number, but block calls from payphones and thereby avoid incurring pass-through per-call charges; or (3) subscribe to a dedicated 8XX number that would allow the subscriber to receive calls without a payphone surcharge, because the calling party would pay the rate established by the PSP for such calls directly at the payphone. A call placed using the dedicated 8XX number would be free with respect to toll charges for the service. AirTouch's proposal is intended to function as a supplement to, rather than a replacement for, the existing compensation system. If the Commission adopts caller pays compensation for all toll-free calls placed from payphones, AirTouch's proposal would become moot.

There is a substantial record of support for AirTouch's proposal,^{16/} for which the Commission recently requested public comment.^{17/} Should the Commission continue to reject

^{16/} See Reply Comments of AirTouch Paging, June 22, 1998, at pp. 7-9.

^{17/} Public Notice, Report No. 2274, released May 6, 1998.

the market-based solution presented by a caller pays compensation methodology, it should adopt AirTouch's proposal, which offers the same benefits as caller pays but does not disturb the Commission's existing compensation scheme.

Notably, in the *Remand Public Notice*, the Commission expressly requested comments on alternative market-based compensation methodologies. The AirTouch Petition for Rulemaking, and the comments received to date by the Commission regarding that proposal, should be incorporated into the record of this proceeding, and the Commission should act on the AirTouch proposal within the six-month time frame established by the Court to resolve all remand issues.

IV. The Record Regarding PSP Costs Must Be Supplemented Before the Commission Can Determine Whether the Payphone Market Is Competitive

As set forth in Section II above, AirTouch believes the Commission should adopt a true market-based methodology — caller pays — rather than continue to attempt to derive a market rate based on costs. If the Commission continues to construct a market rate, rather than simply allowing market forces to function, then substantially more information must be provided to the Commission than previously has been the case.

AirTouch is not a PSP and therefore has no direct evidence of PSP costs. AirTouch agrees that the existing record regarding PSP costs is incomplete and that PSPs generally have not provided the Commission with information necessary to determine what their costs are. PSPs should be compensated only for the costs directly attributable to the actual service they provide — direct LEC or IXC access — and not for ancillary costs such as the use of their equipment. As the Court noted when it first remanded this proceeding to the Commission

in 1997, the Commission already has received evidence that for coinless calls, the PSP bears only the costs of originating calls, whereas for local coin calls the PSPs bears both origination and completion costs.^{18/} This evidence should be considered in any analysis of PSP costs.

V. Conclusion

WHEREFORE, the foregoing premises duly considered, AirTouch Paging respectfully requests that the Commission amend its rules consistent with the foregoing comments.

Respectfully submitted,

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^{18/} *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555, 563 (D.C. Cir. 1997) ("Payphones I").

CERTIFICATE OF SERVICE

I, Michelle A. Harris, hereby certify that I have on this 13th day of July, 1998, caused a true and correct copy of AirTouch Paging's foregoing "Comments" to be sent to the following, by hand or by first-class United States mail, postage prepaid:

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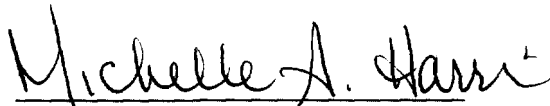
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